

**\*E-FILED 01-11-2011\***

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CLARENCE CHAN,

No. C10-02528 JW (HRL)

Plaintiff,

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION TO COMPEL INITIAL  
DISCLOSURES AND DISCOVERY**

v.

**[Re: Docket No. 19]**

EMPIRE FIRE & MARINE INSURANCE  
COMPANY; ZC STERLING INSURANCE  
AGENCY, INC.; ZURICH; and DOES 1-100,

Defendants.

This action arises from the burglary of plaintiff Clarence Chan's home. His claim for insurance benefits was denied. Chan, who is proceeding pro se, sues for alleged bad faith breach of his insurance policy. Defendants contend that plaintiff's claim properly was denied because Chan refused repeated requests for information about his claimed losses.

Before this court is defendants' motion for an order (a) compelling plaintiff to provide his Fed. R. Civ .P. 26 initial disclosures; (b) compelling plaintiff to respond, without objection, to their interrogatories and document requests; and (c) deeming admitted matters in defendants' requests for admission. The docket indicates that defendants' motion was duly served on plaintiff at his address of record. Plaintiff failed to file any opposition to the motion, as required by Civil Local Rule 7-3. He did appear for the January 11, 2011 motion hearing, at which time defense counsel advised that several weeks ago, Chan produced a box of documents. Included

1 in the box was a document that apparently contain his responses to defendant's requests for  
2 production, interrogatories and requests for admission (albeit, the responses themselves are  
3 titled "Declaration of Defendant Clarence Chan in Opposition to Motion for Summary  
4 Judgment" and the document erroneously is captioned for the Santa Clara County Superior  
5 Court).

6 As a threshold matter, Chan is advised that the fact that he is proceeding pro se does not  
7 excuse him from complying with rules that all litigants are obliged to follow. *See King v.*  
8 *Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) (finding that pro per litigants must follow the same  
9 procedural rules as represented parties). And, there is a limit to the number of procedural  
10 missteps that this court fairly can countenance. Chan is well-advised to obtain a copy of the  
11 court's Handbook for Litigants Without a Lawyer (available at the Clerk's Office and on the  
12 court's website at [www.cand.uscourts.gov](http://www.cand.uscourts.gov)). He may also wish to avail himself of services  
13 available at the Federal Legal Assistance Self-Help Center at the San Jose Courthouse.

14 With respect to defendants' motion to compel Chan's initial disclosures, Rule 26(a)(1)  
15 of the Federal Rules of Civil Procedure provides that, except as otherwise stipulated or ordered  
16 by the court, a party must—without waiting for a discovery request—provide certain  
17 information about witnesses, documents, damage computations, and liability insurance. The  
18 exceptions to the mandatory initial disclosure requirement do not apply here. *See* FED. R. CIV.  
19 P. 26(a)(1)(B). Defendants say that they conferred with plaintiff about his requisite disclosures  
20 in August 2010. And, the record presented indicates that plaintiff's initial disclosures are  
21 months overdue. Chan stated to this court that he will serve his disclosures on defendants this  
22 week. Accordingly, defendants' motion to compel Chan's initial disclosures is granted. Chan  
23 shall serve his Fed. R. Civ. P. 26 initial disclosures on defendant no later than **January 14,**  
24 **2011.**

25 As for defendants' motion to compel Chan's responses to their requests for production  
26 and interrogatories, this court will, in its discretion, deem the motion moot in view of Chan's  
27 responses served in December 2010. For future reference, however, Chan is advised that the  
28 failure to timely respond to a discovery request constitutes a waiver of all objections. *See*

1 *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir.1992). Although  
2 courts have broad discretion to grant relief from any waiver, *see Blumenthal v. Drudge*, 186  
3 F.R.D. 236, 240 (D. D.C. 1999), Chan must offer more than his pro se status to establish good  
4 cause for such relief. And, it is expected that Chan will apprise himself of applicable deadlines  
5 on any future discovery requests defendants may serve.

6 As for defendants' requests for admission (RFAs), there is no dispute that Chan's  
7 responses were well overdue. When a party fails to timely respond to RFAs, the matters  
8 requested are automatically deemed admitted. *See* FED. R. CIV. P. 36(a)(3) ("A matter is  
9 admitted unless, within 30 days after being served, the party to whom the request is directed  
10 serves on the requesting party a written answer or objection addressed to the matter and signed  
11 by the party or its attorney."). As discussed at the motion hearing, this court will, in its  
12 discretion, relieve Chan from the automatic admission of those matters in this particular  
13 instance. On any future requests, however, Chan is well advised to serve his responses within  
14 the time set out in the Federal Rules of Civil Procedure.

15 Finally, at oral argument, defendants stated that they believe Chan's discovery responses  
16 are deficient. As defendants acknowledged, however, the sufficiency (or not) of Chan's  
17 responses are not before this court on the instant motion. The parties are directed to meet-and-  
18 confer in person, and in good faith, in an effort to resolve any disputes about Chan's responses  
19 before seeking judicial intervention. CIV. L.R. 37-1. If they cannot agree on a suitable meeting  
20 place, the in-person meet-and-confer negotiations shall take place at a location half-way  
21 between defense counsel's and plaintiff's respective locations.

22 SO ORDERED.

23 Dated: January 11, 2011

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25 \_\_\_\_\_  
26 HOWARD R. LLOYD  
27 UNITED STATES MAGISTRATE JUDGE  
28

1 5:10-cv-02528-JW Notice has been electronically mailed to:

2 Elaine I. Videa evidea@bishop-barry.com

3 Jonathan Gross jgross@bishop-barry.com, kmcandrews@bishop-barry.com

4 Counsel are responsible for distributing copies of this document to co-counsel who have not  
5 registered for e-filing under the court's CM/ECF program.

6 5:10-cv-02528-JW Notice mailed to:

7 Clarence Chan  
8 3195 Alexis Drive  
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10 Pro Se Plaintiff